

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION

WAYNE COUNTY ASSOCIATION FOR  
THE RETARDED d/b/a SERVICES TO  
ENHANCE POTENTIAL<sup>1</sup>  
Employer-Petitioner

and

Case 7-UC-556

MICHIGAN AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES COUNCIL 25, AFL-CIO, CLC,  
AND ITS LOCAL 1640  
Union

Appearances:

William L. Hooth, Attorney, of Troy, Michigan for the Employer-Petitioner.  
Eric I. Frankie, Attorney, of Detroit, Michigan for the Union.

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The names of the parties appear as corrected at the hearing.

<sup>2</sup> The Employer filed a brief, which was carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer-Petitioner seeks to clarify the existing unit to include five non-bargaining unit employees in the newly created position of “supports coordinator.”

The Employer-Petitioner is a non-profit organization that receives funding from the State of Michigan to provide vocational training, support services, and community employment services to developmentally disabled adults in Wayne County. The Employer’s clients receive training and employment opportunities within its facility workshops or by placement in community employment. The Employer operates six facilities: the Dearborn facility at 2941 S. Gulley Road; the Detroit facility at 4700 Beaufait; the Downriver facility at 4210 13th Street in Wyandotte; the Eastern facility at 17910 Van Dyke in Detroit; the Northwest facility at Schoolcraft Road in Livonia; and the Western Wayne facility at 35000 Van Born Road in Wayne. Each facility houses a workshop. Central administration is located at 32233 Schoolcraft Road in Livonia. The Employer’s organization is headed by Erica Ellis, who serves both as Interim Executive Director and Assistant Executive Director/Clinical Director, and who reports to the board of directors. Reporting to the Interim Executive Director are the assistant executive director/clinical director, Assistant Director for Administration Avery Kreiger, and four facility or regional facility directors.

The Union represents a wall-to-wall unit of approximately 120 of the Employer’s employees, with the exception of the petitioned-for employees, who until recently belonged to a classification historically excluded from the bargaining unit.<sup>3</sup> The most recent collective-bargaining agreement covers employees at all facilities and is effective from October 1, 1999 through September 30, 2002.<sup>4</sup>

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<sup>3</sup> The parties stipulate, and I find, that all full-time and regular part-time employees in the following classifications, but excluding supervisors, guards and confidential employees, constitute an appropriate unit for collective bargaining: assistant production manager/workshop supervisor, facility secretary, floater, job coach, maintenance worker I, service liaison, skills trainer, speech pathologist, supervisor/job coach, supervisor/workshop, supervisor/worksites, supports coordinator I, supports coordinator II, supports coordinator/intake, TBI vocational instructor, truck driver, bus driver, contract procurement agent, evaluator, food service director, food service manager, food service supervisor, maintenance worker II, receptionist/typist, trainer-maintenance.

<sup>4</sup> The predecessor collective-bargaining agreement expired on September 30, 1999, and was extended on a day-to-day basis pending contract negotiations. Under that contract, there is no mention of the supports coordinator classification, and the classification of case manager was included in the unit. The record is silent as to the date the current contract was executed.

On January 20, 2000, the Employer's board of directors approved a strategic plan that set goals for 2000-2004, and incorporated the State of Michigan mental health code's increased emphasis on the placement of clients in community employment. The board of directors approved a reorganization plan on March 16, 2000, that eliminated the positions of case manager and case manager/employment training specialist ("case manager/ETS"), and merged the functions of the two positions into a new classification of supports coordinator.

On April 18, 2000, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, filed a petition to represent the case managers/ETS and other unrepresented positions in the Employer's organization that have since been eliminated. The undersigned dismissed the UAW's petition on the grounds that the future scope and/or composition of the unit was in substantial doubt due to the imminent and certain change precipitated by the Employer's planned reorganization. The Board affirmed the dismissal on January 16, 2001.

Following the Board's decision, the Employer implemented its reorganization plan and merged the functions of case managers/ETS and case managers into the new supports coordinator classification. The Employer then recognized the Union as the exclusive collective-bargaining representative of the supports coordinators who were formerly case managers/ETS, and extended the collective-bargaining agreement with the Union to those employees. Subsequently, the UAW and a former case manager/ETS filed unfair labor practice charges against the Employer and the Union. The undersigned issued a consolidated complaint on October 31, 2000, alleging that the Employer violated Section 8(a)(1), (2), (3), and (4) of the Act, and that the Union violated Section 8(b)(1)(A) and (2) of the Act by, inter alia, providing unlawful assistance to the Union and recognizing the Union as the exclusive collective-bargaining representative of the petitioned-for employees at a time the Union did not represent an uncoerced majority of the petitioned-for employees. To resolve the pending complaint, the Employer and Union entered into informal bilateral settlement agreements approved by the undersigned in February 2001. Pursuant to the settlement agreements, the Employer withdrew recognition of the Union as the collective-bargaining representative for supports coordinators who were formerly case managers/ETS, reimbursed dues collected for the Union, and the cases were closed.

The Employer now seeks to have the unit clarified to include the five supports coordinators who were formerly case managers/ETS and subject to the above-described unfair labor practice proceeding. The five supports coordinators are currently: Cheryl Fregolle, Jacqueline Tubaro, Mary Johnson-Nixdorf, Kimberly Mackniesh, and Corinne Moore. The Union does not oppose the Employer's

petition. The UAW was served with a copy of the Notice of Hearing on the petition, but did not appear.

Prior to the reorganization, about 21 case managers in the bargaining unit provided case management services to clients receiving services, including training and workshop employment, at the Employer's six facilities. Case managers completed an annual assessment of the needs of each client at the facility, and created an annual plan of service to meet those needs. Services included behavior management, preparation for employment in the community, transportation, and assistance paying bills. The case managers either provided the services themselves or coordinated with other service providers. Case managers were assigned throughout the Employer's six facilities, where they spent the majority of their time. They were supervised by four case management or regional case management supervisors, who in turn reported to the facility case management director.

Non-unit case managers/ETS provided case management services to clients in community employment and ensured clients were functioning well on their jobs. They spent the majority of their work time outside the Employer's facilities meeting with clients and employers at jobsites. The case managers/ETS were part of the Employer's placement department, located at the Dearborn facility, and they were supervised by Placement Department Director Ronald Krzesniak, whose office was at the Northwest facility.

The reorganization eliminated the classifications of case manager and case manager/ETS, and merged their functions into the new position of supports coordinator in order to provide continuity of service to the Employer's clients. The title "supports coordinator" reflects a change in terminology in the State of Michigan mental health code. The state defines supports coordination as a combination of community and facility case management services. The Employer's reorganization enabled a client to be served by the same supports coordinator throughout his training in a facility, preparation for job placement, and employment in the community. The supports coordinator classification is comprised of former non-unit case managers/ETS and former unit case managers. The supports coordinators report to six supports coordinator supervisors, who in turn report to the facility directors.<sup>5</sup>

The supports coordinator classification is divided into subcategories: supports coordinator I, which has the additional requirement of maintaining certified social worker licensure, and supports coordinator II, which does not

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<sup>5</sup> The parties stipulated, and I find, that the supports coordinator supervisors are supervisors within the meaning of the Act because they use independent judgment to assign and direct work of employees.

require certification.<sup>6</sup> All other educational and practical qualifications are identical for the two subcategories, and their job duties are indistinguishable. Bargaining unit employees and non-bargaining unit employees are in the supports coordinator I subcategory. The supports coordinator II subcategory is comprised only of bargaining unit employees.

The bargaining unit and non-bargaining unit supports coordinators have identical functions, use the same skills, work out of the same facilities, and report to the same supervisors. Both groups are paid according to the same wage scale, work the same hours, and receive the same benefits. The bargaining unit and non-bargaining unit supports coordinators are paid overtime in the same manner, and are treated identically in regard to transfers. Both groups are subject to the same agency work rules and dress code. To facilitate the consolidation of job functions, the Employer provided the same training to bargaining unit and non-bargaining unit employees.

The Board will entertain a unit clarification petition in order to determine the unit placement of employees holding newly created or substantially changed jobs. *Union Electric Co.*, 217 NLRB 666 (1975). The test to determine whether to merge a group of previously unrepresented employees with an established bargaining unit of similarly-situated employees is whether the additional employees share such an overwhelming community of interest with the preexisting unit that they have little or no separate group identity. *Compact Video Services*, 284 NLRB 117 (1987). If the additional employees have no separate identity of their own, they need not be provided an opportunity to vote as to their desire for inclusion in the existing unit. The factors used to determine the community of interest are commonality of supervision, frequency of employee interchange, integration of duties, similarity of skills and training, geographic proximity of work locations, bargaining history, and functional integration. *Brooklyn Hospital Center*, 309 NLRB 1163 (1992).

In the instant case, the bargaining unit and non-bargaining unit supports coordinators are performing identical jobs with indistinguishable duties and functions. Both groups use identical skills and were provided with the same training. The non-bargaining unit supports coordinators work alongside bargaining unit employees when in the Employer's facilities, are supervised by the same supervisors, and are subject to identical terms and conditions of employment. Although the former case managers/ETS employees were historically excluded from the bargaining unit, the classification of case managers/ETS has been eliminated, and the affected employees have undergone substantial changes in

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<sup>6</sup> A third subcategory, supports coordinator/intake, is not at issue here.

supervision, placement, and duties. Thus, the historical exclusion of the particular employees in dispute does not preclude a finding of accretion. See *Bethlehem Steel Corp.*, 329 NLRB 243 (1999).

Further, the non-bargaining unit supports coordinators have little or no separate group identity outside of the bargaining unit, thus precluding a finding that they would constitute a separate appropriate unit by themselves or with other non-unit employees. Specifically, there appear to be no other employees with whom the non-bargaining unit supports coordinators could combine to make an appropriate unit.

Accordingly, based upon the foregoing and the record as a whole, I conclude that the supports coordinators who were formerly case managers/ETS should be included in the unit herein.

**IT IS HEREBY ORDERED** that the Employer's request to include the supports coordinators who were formerly case managers/ETS in the instant unit is granted, and the unit is hereby clarified to include the supports coordinators who were formerly case managers/ETS.<sup>7</sup>

Dated at Detroit, Michigan, this 30<sup>th</sup> day of January, 2002.

(SEAL)

/s/ William C. Schaub, Jr.  
William C. Schaub, Jr., Regional Director  
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<sup>7</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the **National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14<sup>th</sup> Street N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **February 13, 2002**.

